

THE MOST SERIOUS PROBLEMS ENCOUNTERED BY TAXPAYERS: Introduction

Internal Revenue Code (IRC) § 7803(c)(2)(B)(ii)(III) requires the National Taxpayer Advocate to prepare an Annual Report to Congress that contains a summary of at least 20 of the most serious problems encountered by taxpayers each year. For 2013, the National Taxpayer Advocate has identified, analyzed, and offered recommendations to assist the IRS and Congress in resolving 25 such problems.

As in earlier years, this report discusses at least 20 of the most serious problems encountered by taxpayers — but not necessarily *the top 20* most serious problems. That is by design. Since there is no objective way to select the 20 most serious problems, we consider a variety of factors when making this determination. Moreover, while we carefully rank each year's problems under the same methodology (described immediately below), the list remains inherently subjective in many respects.

To simply report on the top 20 problems would limit our effectiveness in focusing congressional, IRS, and public attention on critical issues. It would require us to repeat much of the same data and propose many of the same solutions year to year. Thus, the statute gives the National Taxpayer Advocate flexibility in selecting both the subject matter and the number of topics to be discussed and to use the report to put forth actionable and specific solutions instead of mere criticism and complaints.

Changes in Approach from Prior Years' Reports

This year, we have altered the format of the Most Serious Problem discussions in two important respects. First, we are not including an IRS response to our initial discussions and thus are no longer including the National Taxpayer Advocate's response to the IRS's comments. Second, we will be publishing the IRS formal response in conjunction with the National Taxpayer Advocate's report issued on June 30.¹ In large part, this change was necessary so that we could issue the Annual Report as close as possible to the December 31 statutory deadline, given the 16-day government shutdown, which hit at a particularly crucial time in the report's editing and review schedule.²

This change in approach, however, also brings us into conformity with the specific statutory language of IRC § 7803(c)(2)(B)(iii), which requires the National Taxpayer Advocate to submit her reports "directly" to the House Committee on Ways and Means and the Senate Committee on Finance "without any prior review or comment from the Commissioner, the Secretary of the Treasury, the Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget."³

This statutory directive was designed to enhance and protect the independence of the National Taxpayer Advocate's observations and comments.⁴ It reflects a radical change from prior law, which required the Taxpayer Ombudsman to co-author the report to Congress with the IRS Assistant Commissioner

1 IRC 7803(c)(2)(B)(i).

2 IRC 7803(c)(2)(B)(ii) requires the National Taxpayer Advocate to submit an "activities" report to the tax-writing committees of Congress not later than December 31 of each calendar year.

3 IRC § 7803(c)(2)(B)(iii).

4 The stated objective of these reports is "for Congress to receive an unfiltered and candid report of the problems taxpayers are experiencing and what can be done to address them. The reports by the Taxpayer Advocate are not official legislative recommendations of the Administration; providing official legislative recommendations remains the responsibility of the Department of Treasury." Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 104th Congress*, JCS 12-96, 21 (Dec. 18, 1996).

(Taxpayer Services).⁵ Congress provided for the IRS's ability to comment and respond to the National Taxpayer Advocate's recommendations (both in the Annual Reports and elsewhere) by requiring the Commissioner to "establish procedures requiring a formal response to all recommendations submitted to the Commissioner by the National Taxpayer Advocate within 3 months after submission to the Commissioner."⁶

In past years, as noted above, the National Taxpayer Advocate submitted her initial analyses with preliminary recommendations to the IRS responsible officials prior to publication and delivery to Congress. We allowed the IRS 30 days to respond to our preliminary recommendations. Included in that 30-day period was a seven-day timeframe within which the IRS could identify any factual errors we may have made in the analyses. We asked the IRS to respond specifically to our preliminary recommendations in the hope we could reach agreement and thus not include them in the final recommendations. Regrettably, as discussed below, the IRS agreed to very few preliminary recommendations.

The historic approach to the Annual Report to Congress, which appears to have been carried over from at least 2000, is very difficult to square with the direct and explicit statutory language. The IRS Commissioner and his officers and employees are specifically prohibited from "prior review or comment" with respect to the Annual Report. And yet, as many as 500 pages each year were reviewed and commented on by IRS officers and employees prior to direct delivery to Congress.⁷

This year, we have altered the format of the Most Serious Problem discussions in two important respects.

In past years, following publication of the Annual Report, the National Taxpayer Advocate forwarded to the Commissioner of Internal Revenue a memorandum including all of the recommendations contained in the report, which formally triggers the 90-day period for providing the Commissioner's response to those recommendations. Upon receipt of the Commissioner's formal response to her recommendations, the National Taxpayer Advocate and her staff discuss any concerns and ultimately post the IRS response and the National Taxpayer Advocate's position on the IRS website.⁸

Over the years, we have found the 90-day process to be much more meaningful than the responses we receive from the IRS as a result of the (statutorily prohibited) 30-day review. For example, in the 2012 Annual Report to Congress, the National Taxpayer Advocate made preliminary recommendations for 17 Most Serious Problems. As a result of the IRS's 30-day comments, the number of final recommendations remained the same for 11 Most Serious Problems, the number increased for three Most Serious Problems, and the number decreased for three Most Serious Problems. Overall, the IRS agreed to only 17.6 percent

5 Technical and Miscellaneous Revenue Act of 1988 (TAMRA), Pub. L. No. 100-647, Title VI, Sec. 6235, 102 Stat. 3342, 3737 (Nov. 10, 1988). The Taxpayer Bill of Rights 2 (TBOR 2) amended IRC § 7802 (the predecessor of the IRC § 7803) by replacing the Office of the Taxpayer Ombudsman with the Office of the Taxpayer Advocate and replacing the joint Assistant Commissioner/Taxpayer Advocate Report to Congress with two annual reports to Congress issued directly and independently by the Taxpayer Advocate. Pub. L. No. 104-168, Sec. 101, 110 Stat. 1452, 1453 (July 30, 1996). However, post-TBOR 2, the reports continued to include IRS comments.

6 IRC § 7803(c)(3).

7 We note that the statutory authority for the Treasury Inspector General for Tax Administration (TIGTA) contains no express prohibition as to sharing or including reports with IRS officers or employees or including the IRS's comments. See The Inspector General Act of 1978, Pub. L. No. 95-452, as amended by Pub. L. No. 105-206, §1103, 112 Stat. 685, 705 (July 22, 1998). Likewise, IRC § 7803(d), which details additional duties of TIGTA, contains no prohibition on review or comment by the IRS on TIGTA's reports. We speculate that is because the Inspector General and his employees do not report to the Commissioner of Internal Revenue and therefore his independence does not require the extra safeguard of providing the National Taxpayer Advocate and her employees protection from censorship or undue pressure.

8 2012 Annual Report to Congress Report Card, at <http://www.irs.gov/Advocate/Annual-Report-to-Congress-Report-Cards>.

of our preliminary recommendations. Yet, as a result of the 90-day process for formally reviewing and responding to the National Taxpayer Advocate's recommendations, the IRS agreed to over 46 percent of the final recommendations.⁹

Thus, this year we decided to adhere closely to the statutory language. We have dispensed with the step of sharing the initial analyses with the IRS for its comment. Instead, we have provided the IRS with all of the IRS-sourced data we cite in the Most Serious Problems along with any underlying assumptions that relate to data interpretation. We have provided the IRS ten days in which to identify any factual inaccuracies. Following submission of the report to the tax-writing committees of Congress, the National Taxpayer Advocate will submit the report to the IRS Commissioner. At the same time, she will provide the formal listing of recommendations which will trigger the 90-day period for IRS response.

We plan to publish the IRS responses and our own response on the Internet, and use those responses to identify the “objectives of the Office of the Taxpayer Advocate” in our Objectives Report for the next fiscal year, published in June of each year.¹⁰ In this way, we will retain full transparency regarding the IRS's perspective on our recommendations to address the Most Serious Problems while still complying with the statutory protections. At the same time, we will link the IRS's responses to the Most Serious Problems with the Taxpayer Advocate Service's objectives for the upcoming fiscal year.

Methodology of the Most Serious Problem List

The National Taxpayer Advocate considers a number of factors in identifying, evaluating, and ranking the most serious problems encountered by taxpayers. The 25 issues were ranked according to the following criteria:

- Impact on taxpayer rights;
- Number of taxpayers affected;
- Interest, sensitivity, and visibility to the National Taxpayer Advocate, Congress, and other external stakeholders;
- Barriers these problems present to tax law compliance, including cost, time, and burden;
- The revenue impact of noncompliance; and
- Taxpayer Advocate Management Information System (TAMIS) and Systemic Advocacy Management System (SAMS) data.

After reviewing this ranking, the National Taxpayer Advocate identified five issues, which are, in her judgment after taking into consideration all of the above factors, the ones most in need of attention and thus requiring the most prominent placement in the ranking. Finally, the National Taxpayer Advocate and the Office of Systemic Advocacy examine the results of the ranking on the remaining issues and adjust it where editorial or numeric considerations warrant a particular placement or grouping.

⁹ 2012 Annual Report to Congress Report Card, at <http://www.irs.gov/Advocate/Annual-Report-to-Congress-Report-Cards>. This percentage includes ARC recommendations adopted in full or in part in MSPs where the NTA offered preliminary recommendations.

¹⁰ IRC § 7803(c)(2)(B)(i).

Taxpayer Advocate Management Information System List

The identification of the Most Serious Problems reflects not only the mandates of Congress and the IRC, but TAS's integrated approach to advocacy — using individual cases as a means for detecting trends and identifying systemic problems in IRS policy and procedures or the Code. TAS tracks individual taxpayer cases on TAMIS. The top 25 case issues, listed in Appendix 1, reflect TAMIS receipts based on taxpayer contacts in fiscal year 2013, a period spanning October 1, 2012, through September 30, 2013.

Use of Examples

The examples presented in this report illustrate issues raised in cases handled by TAS. To comply with IRC § 6103, which generally requires the IRS to keep taxpayers' returns and return information confidential, the details of the fact patterns have been changed. In some instances, the taxpayer has provided a written consent for the National Taxpayer Advocate to use facts specific to that taxpayer's case. These exceptions are noted in footnotes to the examples.